

ARTICLE 5 SPECIAL LAND USE ACTIVITIES

SECTION 5-10

AMATEUR RADIO ANTENNA



A. Amateur Radio Antenna (Ham Radio)

1. Amateur Radio Antenna intended for non-commercial purposes are permitted in all residential districts, provided:
 - a. Such structures shall not be located in any required setback or in front of the front line of the dwelling or principal building; and
 - b. such structures shall not exceed a height of 75'; and
 - c. not more than one such structure per lot or parcel is allowed; and
 - d. no antenna shall be located closer than its height to any adjacent property or public right-of-way or any unrelated structures unless accompanied by structurally engineered plans that eliminate the need for a fall zone.

SECTION 5-11

COMMERCIAL COMMUNICATION TOWERS

- A. Communication towers are permitted in all zoning districts with a conditional use permit approved by the Planning and Zoning Commission.
- B. In all zoning district, communications towers shall be subject to the following stipulations:
 1. All communications towers must be structurally engineered.
 2. No cellular tower shall be located closer than its height to any adjacent property, public right of way or any unrelated structure unless accompanied by structurally engineered plans that eliminate the need for a fall zone.
- C. Amateur Radio Antenna intended for non-commercial purposes, that are located on poles, towers, or elevated structures, are permitted in all residential districts, provided:

1. Such structures shall not be located in any required setback or in front of the front line of the dwelling or principal building; and
2. such structures shall not exceed a height of 75'; and
3. not more than one such structure per lot or parcel is allowed; and
4. no antenna shall be located closer than its height to any adjacent property or public right-of-way or any unrelated structures unless accompanied by structurally engineered plans that eliminate the need for a fall zone.

SECTION 5-12

SEXUALLY ORIENTED BUSINESS

A. Findings

Based on evidence of the adverse secondary effects of adult uses presented in reports made available to the Board of Supervisors as set forth in Resolution #04-03-07 enacting this section, and on findings, interpretations, and narrowing constructions incorporated in the cases described in said Resolution, the Board of Supervisors has made specific findings concerning the adverse secondary effects of sexually oriented businesses and the need for additional requirements for the operation of such businesses.

B. Purpose

It is the purpose of this section of the Zoning Ordinance to provide for the orderly regulation of sexually oriented businesses by establishing certain minimum standards in order to protect the health, safety, and general welfare of the citizens of Gila County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this section of the Zoning Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this section of the Zoning Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or the corresponding provisions of the Arizona Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section of the Zoning Ordinance to condone or legitimize the distribution of obscene material.

C. Stipulations and Provisions

1. Classifications

Sexually Oriented Businesses shall be classified as follows:

- a. Adult Arcade
 - b. Adult Bookstore, Adult Video Store, or Adult Novelty Store
 - c. Adult Cabaret
 - d. Adult Live Entertainment Establishment
 - e. Adult Motel
 - f. Adult Motion Picture Theater
 - g. Adult Theater
 - h. Adult Video Facility
 - i. Dual Purpose Business
 - j. Escort Agency
 - k. Exotic Dance Service
 - l. Massage Establishment that offers or provides Adult Service
 - m. Nude Model Studio
 - n. Sexual Encounter Center
 - o. Any business, facility or person that offers or provides Adult Service
2. Enclosure
- A sexually oriented business shall be operated solely and totally within an enclosed building or structure in a manner that does not allow any activities occurring within that enclosure to be viewed from outside that enclosure.
3. Number of Sexually Oriented Businesses
- There shall be no more than one sexually oriented business and no more than one classification of sexually oriented business per lot, parcel or tract or building.
4. Location
- A sexually oriented business is allowed in the C-3 District.
5. Spacing
- A sexually oriented business shall not be located or operated within 2640 feet (½ mile) of the following:
- a. Another sexually oriented business; or
 - b. a building that contains another sexually oriented business; or
 - c. any daycare center, preschool, kindergarten, elementary or secondary school whether public, private or parochial; or
 - d. a public or private park or playground; or
 - e. a church, synagogue, temple, seminary, convent, or monastery, or
 - f. any residential zoning district, a single or multiple family dwelling or any established residential area whether zoned residentially or not; or
 - g. a museum, art gallery, library or community building whether public or private; or

- h. any family oriented business including but not limited to restaurants, amusement parks, recreational facilities, movie theaters, semipublic and public pools, roller or ice skating rinks, batting cages, go-kart tracks, miniature golf courses, sports courts or fields, or any facility, commercial establishment, store, or business, whether public or private, that provides entertainment or services to persons under 18 years of age.

6. Method of Measurement

The distance requirement set by this section of the Zoning Ordinance shall be measured in a straight line without regard for intervening structures or objects, from the lot line of the property occupied by the sexually oriented business to the lot line of the property of the business or facility being measured to. In the case of residential zoning districts, the measurement shall be taken from the lot line of the property occupied by the sexually oriented business to the closest boundary line of that district. In the case of established residential areas, the measurement shall be taken from the lot line of the property occupied by the sexually oriented business to the closest property line of the property upon which a residence (single or multiple family dwelling) or residential accessory structure sits.

7. Hours of Operation

A sexually oriented business shall not be open or remain open for business at any time between the hours of 10:00 p.m. to 10:00 a.m. on Monday through Saturday and must remain closed on Sundays. However, a sexually oriented business which has obtained a license from the State of Arizona to sell alcoholic beverages may remain open to sell alcoholic beverages under the terms of that license but may not operate any sexually oriented business during the times prohibited.

8. Signage

It is prohibited for explicit sexual material to be put on public display for the purpose of advertising, describing or to assist in locating a sexually oriented business.

9. Preexisting and Nonconforming Sexually Oriented Businesses

- a. The provisions of this section of the Zoning Ordinance shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this section of the Zoning Ordinance subject to the protection provided by Arizona State Statutes and the Constitution of the State of Arizona.
- b. On the effective date of this section of the Zoning Ordinance, any person or entity holding a Certificate of Occupancy to lawfully operate a sexually oriented business shall be permitted to continue to operate as a legal nonconforming use; provided, however, that the use remains restricted to the same classification, location and area (square footage) it occupied prior to that effective date. Should such business cease to operate or be discontinued for any period of time, it shall not thereafter be reestablished

without being in full compliance with all provisions of this section of the Zoning Ordinance and other applicable codes and ordinances subject to the protection provided by Arizona State Statutes and the Constitution of the State of Arizona. The terms “cease to operate” or “discontinued for any period of time” shall mean the voluntary or intentional termination, cessation or discontinuance of the business by the owner or other party in interest or an involuntary termination of the business resulting from a violation of any applicable rule, regulation, ordinance, statute or law. The holder of the certificate of occupancy or operator of the business shall be responsible for providing documentation, acceptable to the Director, that a nonconforming sexually oriented business has not ceased to operate or been discontinued. A nonconforming sexually oriented business shall not be enlarged, increased or altered. Any change in use shall require full compliance with all provisions of this Zoning Ordinance and any other applicable codes subject to the protection provided by Arizona State Statutes and the Constitution of the State of Arizona.

- c. A sexually oriented business lawfully operating with a Certificate of Occupancy describing the sexually oriented business use as a conforming use is not rendered a nonconforming use by the subsequent location within 2,640 feet, of one or more of the business or uses listed under Section 5-12, Item C.

10. Certificate of Occupancy

A Certificate of Occupancy is required to legally operate a business in Gila County. Any change made or added to an existing business must be reflected in that Certificate of Occupancy. Sexually oriented businesses are recognized as a separate and distinct business use and that use must be reflected in the Certificate of Occupancy. A Certificate of Occupancy is required whether the sexually oriented business is a legal nonconforming use or a conforming use. Prior to issuance of a Certificate of Occupancy, the owner or applicant shall be required to file a Development Plan as required by this Zoning Ordinance.

11. Inspection

- a. Sexually oriented businesses and sexually oriented business employees shall permit officers or agents of Gila County to inspect the business premises for the purpose of ensuring compliance with the specific regulations of this section of the Zoning Ordinance, during those times when the sexually oriented business is occupied by patrons or is open for business. This section of the Zoning Ordinance shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this section, but not to authorize a harassing or excessive pattern of inspections.
- b. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

12. Severability

Any County ordinance containing any provision in conflict with any provision of this section of the Zoning Ordinance is hereby repealed. Each section, subsection and provision of this

section of the Zoning Ordinance is hereby declared to be an independent division and subdivision and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this section of the Zoning Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions are severable and would have been passed independently of such section or provision so known to be invalid.

13. Penalties and Enforcement

- a. A person, who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this section of the Zoning Ordinance or any part thereof is guilty of a Class 2 Misdemeanor. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be treated as such.
- b. The County Attorney is authorized to institute civil proceedings necessary for the enforcement of this article to prosecute, restrain, or correct violations.
- c. Such proceedings including injunction, shall be brought in the name of the County, provided, however, that nothing in this section of the Zoning Ordinance and no action taken hereunder, shall be held to exclude such criminal proceedings as may be authorized by other provisions of the Gila County Zoning Ordinance, or any of the laws or ordinances in force in the County or State, or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.